



DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Fee Deficiency Submissions

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651-0070 (Fee Deficiency Submissions). The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Email:* InformationCollection@uspto.gov. Include "0651-0070 comment" in the subject line of the message.
- *Federal Rulemaking Portal:* <http://www.regulations.gov>.
- *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Parikha Mehta, Legal Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, by telephone at 571-272-3248, or by email at *Parikha.Mehta@uspto.gov* with “0651-0070 comment” in the subject line. Additional information about this information collection is also available at <http://www.reginfo.gov> under “Information Collection Review.”

SUPPLEMENTARY INFORMATION:

I. Abstract

Under section 10(b) of the Leahy-Smith America Invents Act (“Act”) (See Pub. L. 112-29, 125 Stat. 283 (2011)), eligible small entities shall receive a 50 percent fee reduction from the undiscounted fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents. The Act further provides that micro entities shall receive a 75 percent fee reduction from the undiscounted fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

This information collection covers the submissions made by patent applicants and patentees to excuse small and micro entity fee payment errors, in accordance with the procedures set forth in 37 CFR 1.28(c) and 1.29(k). Specifically, 37 CFR 1.28(c) provides a procedure by which patent applicants and patentees may be excused for erroneous payments of fees in the small entity amount. 37 CFR 1.29(k) provides a procedure by which patent applicants and patentees may be excused for erroneous payments of fees in the micro entity amount.

Patent applicants and patentees who change their entity status may need to submit additional payments in order to have their applications associated with the

correct category. It is possible for small or micro entity status to be established in good faith, and for a patent applicant or patentee to pay a fee as a small or micro entity in good faith, only to later discover that the entity status was established in error, or to later discover that, through error, the USPTO was not notified of a loss of status entitlement. The USPTO will excuse the error if a deficiency payment and other requirements are submitted in compliance with 37 CFR 1.28(c) or 1.29(k). Thus, this information collection is necessary so that patent applicants and patentees may pay the balance of fees due (i.e., fee deficiency payment) when a fee was previously paid in error in a micro or small entity amount. The USPTO needs the information to be able to process and properly record a fee deficiency payment to avoid questions arising later, either for the USPTO or for the applicant or patentee, as to whether the proper fees have been paid in the application or patent.

II. Method of Collection

The items in this information collection may be submitted online using the Patent Electronic Systems (EFS-Web or Patent Center), or on paper by either mail or hand delivery.

III. Data

OMB Control Number: 0651–0070.

Form Numbers: None.

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private Sector; individuals or households.

Estimated Number of Respondents: 2,000 respondents per year.

Estimated Number of Responses: 3,002 responses per year.

Estimated Time Per Response: The USPTO estimates that the response time for activities related to Fee Deficiency Submissions will take the public approximately 2 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed information to the USPTO.

Estimated Total Annual Respondent Burden Hour: 6,004 hours.

Estimated Total Annual Respondent (Hourly) Cost Burden: \$2,401,600.

Table 1: Total Hourly Burden For Private Sector Respondents

Item No.	Item	Estimated Annual Respondents	Responses per Respondent	Estimated Annual Responses	Estimated Time For Response (Hours)	Estimated Burden (hour/year)	Rate ¹ (\$/hour)	Estimated Annual Respondent Cost Burden
		(a)	(b)	(a) x (b) = (c)	(d)	(c) x (d) = (e)	(f)	(e) x (f) = (g)
1	Submissions Under 37 CFR 1.28(c)	1,455	1.5	2,183	2	4,366	\$400	\$1,746,400
2	Submissions Under 37 CFR 1.29(k)	485	1.5	728	2	1,456	\$400	\$582,400
	Totals	1,940	---	2,911	---	5,822	---	\$2,328,800

Table 2: Total Hourly Burden For Individuals or Households Respondents

Item No.	Item	Estimated Annual Respondents	Responses per Respondent	Estimated Annual Responses	Estimated Time For Response (Hours)	Estimated Burden (hour/year)	Rate ² (\$/hour)	Estimated Annual Respondent Cost Burden
		(a)	(b)	(a) x (b) = (c)	(d)	(c) x (d) = (e)	(f)	(e) x (f) = (g)
1	Submissions Under 37 CFR 1.28(c)	45	1.5	68	2	136	\$400	\$54,400
2	Submissions Under 37 CFR 1.29(k)	15	1.5	23	2	46	\$400	\$18,400
	Totals	60	---	91	---	182	---	\$72,800

Estimated Total Annual Cost Burden (Non-Hourly): \$248.

¹ 2019 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); <https://www.aipla.org/detail/journal-issue/2019-report-of-the-economic-survey>. The USPTO uses the mean rate for attorneys in private firms which is \$400 per hour.

² 2019 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); <https://www.aipla.org/detail/journal-issue/2019-report-of-the-economic-survey>. The USPTO uses the mean rate for attorneys in private firms which is \$400 per hour.

There are no capital startup, maintenance, or operating fees associated with this information collection. There are, however, postage costs associated with this information collection.

Although the USPTO prefers that the items in this information collection be submitted electronically, responses may be submitted by mail through the United States Postal Service (USPS). The USPTO estimates that 1% of the 3,002 responses will be submitted in the mail resulting in 30 mailed items. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail 2-day flat rate legal envelope, will be \$8.25. Therefore, the USPTO estimates the total mailing costs for this information collection at \$248.

Respondent's Obligation: Required to obtain or retain benefits.

IV. Request for Comments

The USPTO is soliciting public comments to:

- a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility;
- b) Evaluate the accuracy of the Agency's estimate of the burden, including the validity of the methodology and assumptions used;
- c) Enhance the quality, utility, and clarity of the information to be collected; and
- d) Minimize the burden of the collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record.

USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email

address, or other personally identifiable information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, USPTO cannot guarantee that it will be able to do so.

Kimberly Hardy,
Information Collections Officer,
Office of the Chief Administrative Officer,
United States Patent and Trademark Office.

BILLING CODE 3510–16–P

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